

deemed to be a clause relieving the carrier from liability."

It was submitted by Mr. Karthigesu that the bills of lading contemplate two possibilities:

1. If discharged by ship's tackle then responsibility ceases when the goods leave the ship's tackle;
2. If discharged by shore cranes then responsibility is to cease when the goods are lifted from and leave the ship's deck.

In the former i.e. discharge by ship's tackle the operation of the duty ends when the goods are deposited on the quayside.

In the latter the operation ends not when the goods are lifted from and leave the ship's deck as they still have to be placed on the quayside.

As according to Mr. Karthigesu, the provisions as to cesser of the 1st defendant's liability purport to apply before discharge is completed they come into conflict with Article III rule 8 above and are null and void and of no effect. Any provision which attempts to relieve the carrier from liability before the goods have been discharged is nullified by the Hague Rules.

If the provision as to lifting from and leaving the ship's deck by shore cranes is offensive to the Hague Rules, the discharge on to the quayside by ship's tackle is not and the question arises as to whether they are severable.

In *The Svenska Traktor Atk. v. Maritime Agencies (Southampton) Ltd.*⁽²⁾ at p. 301 Pilcher J. considered it possible in a clause consisting of two parts to sever that part which does not offend against the Rules and merely strike out the offending part.

McNair J. however in *Renton v. Palmyra*⁽³⁾ at pp. 477, 478 on the question whether it is permissible to 'blue pencil' and delete only the offending provision said:—

"The words of Article III rule 8 'any clause, covenant or agreement' are quite precise and do not, as I think, permit of any such process of revision in a case where the Act and Rules apply as a matter of law; and where as in this case the Act and Rules apply as a matter of contract and the parties have not in the incorporation clause used language such as 'if and to the extent that any terms of this bill of lading are repugnant to or inconsistent with the Act or Rules such term is void' (as in the *Svenska Traktor* case *supra*) I see no method of construction by means of which such process of revision can take place."

The case went to the Court of Appeal and thence to the House of Lords and while reversing the decision of McNair J. on other grounds expressed no opinion on this matter.

In my opinion on the true construction of clause 15 the two are severable and as the discharge on to the quayside by ship's tackle is not repugnant to or inconsistent with the Hague Rules the carrier is afforded complete protection.

A In view of these findings it is unnecessary to deal with the other matters raised in argument by Mr. Grimberg and I refrain from doing so.

B In the result, therefore, I answer the second question in the special case like the first in the affirmative and the plaintiff's claim against the 1st defendant must be dismissed with costs.

Claim dismissed.

Solicitors: Allen & Gledhill; Drew & Napier; Rodyk & Davidson.

C **PHANG MOH SHIN v. COMMISSIONER OF POLICE & ORS.**

[O.C.J. (Buttrose J.) June 27, 1967]

[Singapore — Civil Suit No. 7 of 1965]

D *Administrative Law — Police Force — Dismissal of detective police constable — Disciplinary proceedings — Breach of "audi alteram partem" rule — Real likelihood of bias — Contravention of Police Regulations and General Orders — Void — Police Regulations, 1959, Part III, 7(5) & (6), 9 — Police General Order 403(27).*

Police — Disciplinary proceedings — Dismissal — Police Regulations and General Orders — Contravention of.

E *Domestic Tribunal — Rules of evidence — Natural justice.*

F The plaintiff sought a declaration that his dismissal from the Singapore Police Force was void, inoperative and of no effect on three grounds: (a) breach of the "audi alteram partem" rule, (b) bias, and (c) the disciplinary proceedings were not held in accordance with the Police Regulations or General Orders. A complaint against the plaintiff was made by a member of the public and as a result of a preliminary investigation a disciplinary offence was disclosed and it became necessary to charge the plaintiff in accordance with the Police Regulations, 1959. The third defendant was delegated to conduct the disciplinary proceedings. There was sharp conflict of evidence as to when the plaintiff was first informed of the charge. The court however arrived at the conclusion that the plaintiff was first charged at the commencement of the disciplinary proceedings on May 13, 1963. During the proceedings the charge was read to the plaintiff but no copy of it was supplied to him either before, at or during the proceedings. Plaintiff's request for an adjournment to prepare his defence was refused. The third defendant had before him the investigation papers, plaintiff's service sheet and personal record, miscellaneous files containing complaints concerning the plaintiff's behaviour which were unconnected with the charge and a previous conviction on an extortion charge which was quashed on appeal. All these were taken into consideration by the third defendant in arriving at his decision and in making his recommendations. The contents of these documents were not disclosed to plaintiff and he was never given an opportunity of answering or explaining them. Furthermore, the third defendant had been previously the plaintiff's senior officer and had direct charge and control over him and would thus have access to his personal file and service sheets.

I Held: (1) the plaintiff was not given adequate notice to meet and answer the charge. Even if plaintiff was charged on Friday or Saturday there was totally inadequate notice to meet and answer the charge on the following Monday bearing in mind that the week-end had all but arrived and the plaintiff was on 24 hour

reserve duty the whole of the Sunday and Sunday night;

(2) there was a real likelihood of bias, that is, an operative prejudice whether conscious or unconscious on the part of the third defendant;

(3) the disciplinary proceedings were unsatisfactory and not in accordance with the Police Regulations, 1959, Part III. None of the witnesses against the plaintiff gave evidence before the third defendant in the presence of the plaintiff. Nor was their evidence recorded by the third defendant as was required by the regulations save for a few questions in cross-examination. The pre-recorded statements which were never made available to the plaintiff were merely read out by the third defendant to the plaintiff and thereupon told to cross-examine the witnesses. The recorded statements were not signed by the third defendant as required by regulation 7(6). There was also a breach of the Police General Order 463(27);

(4) the plaintiff was entitled to the declaration that his dismissal was void.

Observation on conduct of disciplinary proceedings.

Per Buttrose J.: "... the strict rules of evidence are not applicable to domestic tribunals, but on the other hand they must conduct themselves in accordance with the principles of natural justice."

Cases referred to:—

- (1) *R. v. Cambourne Justices* [1954] 2 All E.R. 850.
- (2) *C. S. Sharma v. State of Uttar Pradesh* A.I.R. 1961 Allahabad 45.
- (3) *B. Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] M.L.J. 169, P.C.

CIVIL SUIT.

Lim Chor Pee for plaintiff.

Ho Kian Ping (State Counsel) for the defendants.

Cur. Adv. Vult.

Buttrose J.: In this action the plaintiff seeks a declaration that his dismissal from the Singapore Police Force purported to be effective on the 18th May, 1963, was illegal, void, inoperative and of no effect.

The plaintiff bases his claim on three grounds:—

- (1) That the principle embodied in the maxim "*audi alteram partem*" was not adhered to in that:—
 - (a) the plaintiff had no notice or inadequate notice of the charge against him in point of time; and
 - (b) he was not given an opportunity of being heard in his defence;
- (2) That the 3rd defendant who conducted the disciplinary proceedings instituted against the plaintiff was biased or that there was a real likelihood of bias on his part; and
- (3) That the disciplinary proceedings were not held in accordance with Police Regulations or General Orders.

The plaintiff joined the Singapore Police Force in October, 1956, as a detective police constable. In March, 1963, a complaint was

A made against the plaintiff who was still a detective police constable and at that time attached to the Orchard Road Police Station — Crime Side. This complaint was made by a member of the public to the Central Complaints Bureau. As a result an investigation was carried out by a senior detective officer of the Orchard Road Police Station, one Inspector Mahadevan who recorded statements from a number of persons including the plaintiff. The statement of the complainant was recorded by Assistant Superintendent of Police Amerasinghe.

C The majority of these statements were recorded in March 1963. According to the plaintiff he heard nothing further about the matter until the 12th May, 1963, when while he was on 24-hour reserve duty, and during the evening roll call, he was told to report to the 3rd defendant on the following morning, the 13th May, 1963, to be defaulted but was not informed of the nature of the default. It subsequently transpired in evidence that it was not during the evening roll call that he was told to report the following morning at 10.10 a.m. on the 12th May, 1963, and this was admitted by the plaintiff. The position was that as a result of the preliminary investigation carried out by Inspector Mahadevan a disciplinary offence was disclosed and it became necessary to charge the plaintiff in accordance with the Police Regulations, 1959 and the 3rd defendant was detailed to conduct the disciplinary proceedings which were required to be held without undue delay.

F There is a sharp conflict of evidence as to when the plaintiff was first informed of the charge against him. According to the plaintiff it was not until he appeared before the 3rd defendant on the morning of the 13th May, 1963, the day on which the disciplinary proceedings were held that he was told for the first time what the charge against him was.

G The 3rd defendant's evidence on this matter was that 2 or 3 days before the hearing on the 13th May, 1963, (i.e. the 10th or 11th May) the plaintiff was brought before him under escort. The 3rd defendant said he read the charge to the plaintiff and explained it to him and on being asked to plead to it the plaintiff claimed trial. H The 3rd defendant then postponed the hearing until the 13th May, 1963, and the reason he gave for charging the plaintiff in advance of the hearing was that if he pleaded guilty no witnesses would require to be summoned to attend.

I It was common ground that the plaintiff was never at any time given a copy of the charge either before, at or during the disciplinary proceedings.

It is a most unfortunate circumstance that the 3rd defendant made no written record of his calling the plaintiff up on the 10th or 11th May, 1963 and charging him and taking his plea.

They were matters of prime importance and the proper formalities should have been observed and a full record should have been made with regard to them by the 3rd defendant as they constituted the essential and indispensable preliminaries to the actual disciplinary proceedings and formed part of them. In the result, I am left in considerable doubt as to whether the plaintiff was charged some 2 or 3 days prior to the actual hearing as alleged by the 3rd defendant, a situation for which he has only himself to blame. The charge itself is undated and at the end of it appear the words "Plea: Claim trial" and as the 3rd defendant said that he made no written record when he charged the plaintiff on the 10th or 11th May, 1963 it is quite clear that entry relates to the plaintiff being charged at the commencement of the hearing and not before. In his comments and recommendations at page 69 of the agreed bundle of documents Ex. AB 1 the 3rd defendant merely indicated that the plaintiff was brought before him at 10 a.m. on the 13th May, 1963 when the charge was read and explained to him in English and he claimed trial and that witnesses were then called and cross-examined by the plaintiff. Furthermore there would seem to be no point in charging him a second time or in reading the charge over to him twice as the 3rd defendant said he did at the opening of the proceedings if he had already been charged and claimed trial. Again it would appear unnecessary to inform the plaintiff while he was on reserve duty on the Sunday to present himself before the 3rd defendant on the Monday if he had already been charged and claimed trial, one or two days previously and told that the disciplinary proceedings would be adjourned to that very day, Monday the 13th May, 1963, when the hearing would commence.

I have come to the conclusion that the plaintiff was first charged at the commencement of the disciplinary proceedings on the 13th May, 1963, and not earlier.

On any view, however, of the evidence on this matter the plaintiff was not, in my opinion, given sufficient notice of the charge against him and as I have said he was never given a copy of the charge which he should have been.

It is true that the plaintiff was undoubtedly aware of the subject matter in respect of which he was being defaulted but that is quite a different matter from knowing the precise charge against him and the penalty which a conviction on such charge would render him liable.

Even if it were true that he was first informed of the charge on the Friday or Saturday that is I consider a totally inadequate notice to meet and answer a charge involving the plaintiff's dismissal on the following Monday bearing in mind that the week-end had all but arrived and the plaintiff was on 24-hour reserve duty the

A whole of the Sunday and Sunday night.

I now turn to deal with the conduct of the disciplinary proceedings themselves.

B At 9 a.m. on the 13th May, 1963, when he was marched in under escort before the 3rd defendant the plaintiff as I have already said was unaware of the exact nature of the charge against him. The proceedings then commenced. The charge was read to the plaintiff who thereupon asked for a copy of it but his request was refused. It was conceded by the 3rd defendant that no copy of the charge was ever supplied to the plaintiff.

C The plaintiff maintained that he then asked for an adjournment to prepare his defence but this also, he said, was refused him as the 3rd defendant said all the witnesses had been summoned for that day.

D The 3rd defendant had before him both prior to and during the hearing the entire file relating to the plaintiff including not only the investigation papers relating to the complaint but also the plaintiff's service sheet and personal record. The 3rd defendant also had before him certain miscellaneous files containing complaints concerning the plaintiff's behaviour and conduct which related to matters entirely unconnected with the charge against him.

E These documents and their contents were never disclosed to the plaintiff at any time during the disciplinary proceedings. They were prejudicial to the character of the plaintiff and he was never given an opportunity of answering or explaining them.

F The 3rd defendant, so it seems to me, could not fail but have to take these matters into consideration in arriving at his decision and making his recommendations. That he did so is borne out by his comments and recommendations at pages 69 and 70 of the agreed bundle of documents, Ex. AB 1, paragraphs 8, 9 and 10 of which are as follows:—

G "8. On records this defaulter (DPC 551) appears to be incorrigible as far as his conduct is concerned although much of the complaints against him was not brought to book as per miscellaneous file enclosed in S/sheet.

H 9. In 1960 he was arrested and charged in court on 2 counts of extortion under section 384 P.C. and 1 charge of attempted extortion under section 385 P.C. On one of which he was convicted and sentenced to 6 months' imprisonment but on appeal his conviction and sentence were quashed.

I 10. As his behaviour has not been of the standard required of a police officer I recommend that he be dismissed from the force as I considered that his action in this case is high handed which will wreck the good name of the force."

There were two further matters which were also before the 3rd defendant, namely a complaint made against the plaintiff in respect of his conduct regarding a nairdressing saloon and his

conviction on a charge of being absent from duty without leave in connection with disobedience of orders.

None of these matters was ever put to the plaintiff nor was he given any opportunity of dealing with or explaining them.

Why it should have been thought necessary to refer to the extortion charges against the plaintiff, a conviction on only one of which resulted and this was set aside on appeal, is difficult to appreciate or understand.

I am unable to escape the conclusion that these matters must have resulted in a "real likelihood of bias" that is "an operative prejudice whether conscious or unconscious" on the part of the 3rd defendant. See *Regina v. Cambourne Justices*.⁽¹⁾

Furthermore the conduct of the disciplinary proceedings themselves was unsatisfactory and not in accordance with the Police Regulations, 1959, Part III of which deals with "Discipline and Punishments".

Regulation 7 deals with disciplinary proceedings against subordinate officers of which the plaintiff was one and by sub-clause (5) thereof it is provided that "if the officer concerned claims to be tried, all the evidence shall be given in his presence and all exhibits may be seen by him. He shall be allowed to cross-examine all witnesses for the prosecution, and may give evidence in his defence and call any witnesses to give evidence on his behalf. He and his witnesses may be cross-examined by the prosecution." Sub-clause (6) of regulation 7 provides that "evidence shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative, but the officer conducting the proceedings may in his discretion take down any particular question and answer. The evidence of each witness shall be signed and dated by the officer conducting the proceedings and by the interpreter, if any."

The only possible interpretation I am able to place on this regulation read as a whole is that all the evidence must be given and recorded in the presence of the officer concerned and all exhibits seen by him.

My attention was drawn to the Indian case of *C. S. Sharma v. State of Uttar Pradesh* ⁽²⁾ where it was held that where the statements of witnesses separately recorded previously were read to them and were confirmed by them and these previous statements were then formally brought on record and exhibited the officer concerned was clearly informed of the statements of the witnesses by the record of the previous statements being read over at the inquiry.

I have the misfortune to disagree with the views expressed by Nigam J. in that case and I am not unmindful, in doing so, that the strict

A rules of evidence are not applicable to domestic tribunals but on the other hand they must conduct themselves in accordance with the principles of natural justice. Apart altogether from the regulation to which I have just referred it would be wrong, in my view, for the court to countenance an inquiry in which only a cross-examination, without the officer concerned hearing what evidence the witnesses are going to give, is permitted. It is difficult to see, how, if the witnesses do not give their evidence before the officer conducting the inquiry, he can properly evaluate and appraise the evidence without hearing and seeing them giving it. The way in which a witness gives his evidence, his demeanour and bearing are important matters to be taken into consideration in determining the weight and value to be attached to his evidence.

In considering this matter regulation 9 must not be overlooked. It provides as follows:—

D "9. The procedure of any disciplinary enquiry shall strictly follow the procedure laid down in these regulations and the written records of all proceedings shall be set down and dated in such manner as to show that the procedure has been complied with."

E None of the witnesses against the plaintiff gave evidence before the 3rd defendant in the presence of the plaintiff nor was their evidence recorded by him as required by the regulations save for a few questions which the plaintiff put to them in cross-examination. Their pre-recorded statements were merely read out by the 3rd defendant in the presence of the plaintiff who was thereupon told to cross-examine the witnesses. These pre-recorded statements were never made available to the plaintiff for him to refer to and he had to cross-examine the witnesses as best he could from what he could remember of the statements which were read out.

G Moreover regulation 7(6) requires that the evidence of each witness shall be signed and dated by the officer conducting the proceedings. The 3rd defendant maintained that he did read out the plaintiff's pre-recorded statement but it was not signed by him and I am left in considerable doubt as to whether it was ever read out at all.

H Furthermore during 1962 and the early part of 1963 the 3rd defendant was the plaintiff's senior officer at the Orchard Road Police Station and the plaintiff was under his direct charge and control and the 3rd defendant would have access to the plaintiff's personal file and service sheets. I am bound to say that under these I circumstances it was highly undesirable that the 3rd defendant should have been detailed to conduct these disciplinary proceedings.

Not only, in my view, do these matters constitute a breach of the regulations but they flout the principles of natural justice. The proceedings lasted the entire day and the plaintiff was

kept standing, albeit at ease, throughout. He was not proffered a chair or a table or note paper or any facilities for making notes.

There is nothing on the record of the proceedings to show whether he was ever called to make his defence to the charge against him or whether there were any witnesses whom he desired to call. The plaintiff was never asked if he had any comments or submissions to make on the evidence.

Having decided to convict him the 3rd defendant never gave the plaintiff an opportunity of being heard in mitigation of penalty or of commenting on or explaining the extraneous matters of complaint against him to which I have already referred.

According to the plaintiff at the close of the day's proceedings he again asked for an adjournment to enable him to call witnesses for his defence which was refused. The 3rd defendant, according to the plaintiff, said "We will let you know when we want you". He was then escorted out and told to present himself on the 20th May, 1963 and with this the 3rd defendant agrees but maintains that it was for the purpose of receiving his sentence from the new O.C.

Before the 20th May arrived however, namely the 18th May, he was peremptorily dismissed from the force with immediate effect and was so informed by Assistant Superintendent of Police Amerasinghe his O.C. Crime.

The plaintiff then said he asked Amerasinghe whether this was the result of the inquiry held on the 13th May, 1963, and on being told that it was said "but that is not possible because my defence was not called on" and he was then told that in that case he could appeal to the Commissioner of Police which he did.

On the 27th May, 1963, the plaintiff wrote a letter to the Commissioner requesting that a copy of the record of the proceedings including all connected papers be made available to him to enable him to seek legal advice on the matter. This was refused by the Commissioner.

On the 10th June, 1963, the plaintiff appealed formally by letter to the Commissioner against his conviction and his appeal is set out at pages 81 to 84 of the agreed bundle of documents — Ex. AB 1. On the 29th June, 1963, the Commissioner wrote a letter to the plaintiff informing him that his appeal was dismissed. I attach considerable importance to the plaintiff's letter of appeal dated the 10th June, 1963 written just 4 weeks after the disciplinary proceedings were held and before any suggestion or thought of instituting civil proceedings for wrongful dismissal could ever have been in contemplation. It takes substantially the same stand which the plaintiff takes now some 4 years later and is consistent with and supports the story he told

A me from the witness box. Particularly is this so with reference to his complaints of insufficient and inadequate notice of the charge against him, of his application for an adjournment, of the failure to be given a copy of the charge and of the failure to be called on for his defence or given an opportunity of being heard with regard to it.

B On these matters therefore where there is a conflict of evidence between the plaintiff and the 3rd defendant I accept the plaintiff's version in preference to that of the 3rd defendant.

C The legal principles involved in this case have been well settled and were succinctly stated by Lord Denning in the case of *B. Surinder Singh Kanda v. The Government of the Federation of Malaya* (8) at pp. 172 and 173 where he says:—

D "The rule against bias is one thing. The right to be heard in another. These two rules are the essential characteristics of what is called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo Judex in causa sua*: and *Audi alteram partem*. They have recently been put in the words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations."

E In the present case the plaintiff complains of a breach of both of them and further says that the disciplinary proceedings were not held in accordance with Police Regulations or General Orders. In my judgment for the reasons I have given his complaints are justified. There was a real likelihood of bias in this case and a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal. The procedure laid down by and the provisions of the Police Regulations were not complied with and in addition there was a breach of Police General Order 403(27).

G It helps not at all to say how much I regret arriving at the conclusions which I have in this case because it would seem that the plaintiff is quite unfit to be or remain a member of the Singapore Police Force.

H The only other matter to which I desire to refer is the regrettable and inordinate delay which has occurred in launching these proceedings and bringing them to trial. In fairness to the plaintiff however I am bound to say that little or none of the blame for this delay would seem to be attributable to him. But after the lapse of 4 years one's memory is apt to become unreliable and minor but nevertheless important details are forgotten. It is therefore both necessary and important for officers conducting disciplinary proceedings or inquiries to make full and careful notes of the whole of the proceedings from the time the officer in question is first charged until the conclusion of the hearing including, *inter alia*, applications by him for an adjournment, if any, calling upon him for his

defence, ascertaining whether he has any witnesses whom he desires to call and what submissions or comments he has to make on the evidence and, if convicted, what he has to say in mitigation of penalty and with regard to other matters of complaint established or alleged against him.

The present record is silent on these matters and the 3rd defendant has had to rely solely on his memory. It is for this reason that I attach considerable weight and importance to the plaintiff's letter of appeal dated the 10th June, 1963 to which I have already referred.

In the result for the reasons which I have given the plaintiff is entitled to the declaration which he seeks that his dismissal from the Singapore Police Force purported to be effective on the 18th May, 1963, was illegal, void, inoperative and of no effect.

There must be judgment for the plaintiff accordingly with costs.

Judgment for the plaintiff.

Solicitors: *Chor Pee & Hin Hiong.*

TAN SIEW SIN v. HASNUL BIN ABDUL HADI *Re application of TUN (DR.) ISMAIL & ANOR.*

[O.C.J. (Pawan Ahmad J.) July 3, 1967]

[Malacca — Civil Suit No. 38 of 1964]

Practice and Procedure — Subpoena — Application to set aside — Whether by summons in chambers or motion — Experience of misreporting — Evidence indirectly relevant and material to defence case.

The applicants had been served with writs of *subpoena ad testificandum* on the written applications by counsel for the defendant herein. They separately applied by summons in chambers to have those writs set aside on the common ground that the application by the defence was vexatious and an abuse of the process of the court. The 1st applicant denied any knowledge whatever of the facts or the merits or demerits of the suit either personally or in his official capacity as the Minister of Home Affairs and as such he would be in no position to give any relevant evidence. He also said that the defendant was a detainee under the Internal Security Act, 1960, a subject matter under his portfolio, and that the writ had been served on him for political purposes. The second applicant said that he was also unable to give any evidence which could possibly be relevant to any issue which might arise in the suit as he was not present on any of the incidents in question. He also added that he and the defendant were political opponents and the writ had been served on him simply for political purposes and for bringing party differences into the court.

The defence submitted that those applications should be dismissed on two grounds: (1) the application should not proceed by summons in chambers but should be by motion, (2) from the facts disclosed in the defendant's affidavits the evidence of both the 1st and 2nd applicants were material and relevant to the defence to establish the defence contention that the defamatory words printed and published by the *Utusan Melayu* dated April 7, 1964 and alleged to have been uttered by the defendant were false and fabricated by the *Utusan Melayu*.

A Held: (1) as the two applications fall under R.S.C., O. 37 r. 26 the application to set aside the subpoena by way of summons in chambers was rightly made and therefore the first objection by the defence must fail;

B (2) although the applicants were not present on those occasions when the defamatory words were alleged to have been uttered by the defendant and they could, therefore, be of no assistance to the defence as to the actual words uttered on those occasions, however, both of them had experience of gross misreporting of their own speeches regarding the defendant's character by the *Utusan Melayu* on some other occasions, and this piece of evidence was indirectly relevant and material to the defence case. Both the applications should therefore be dismissed.

Cases referred to:—

C (1) *R. v. Hurlle-Hobbs, Ex parte Simmons* [1945] 1 All E.R. 273.

(2) *The King v. Baines & Anor.* [1909] 1 K.B. 258 at 261.

CIVIL SUIT.

D *Ajaib Singh* (Senior Federal Counsel) for the 1st applicant.

W. H. Sault for the 2nd applicant.

T. T. Rajah for the defendant.

Cur. Adv. Vult.

E Pawan Ahmad J.: As a result of the written applications by counsel for defence under Order 37 rule 26 of the Supreme Court Rules, writs of *subpoena ad testificandum* were issued and served on Tun (Dr.) Ismail bin Dato' Haji Abdul Rahman, the then Minister of Home Affairs, whom I shall refer to as the 1st applicant and on Enche Abdul Ghaffar bin Baba, Chief Minister of Malacca, whom I shall refer to as the 2nd applicant, to give evidence for the defence at the trial of the above named suit.

G Both the 1st and 2nd applicants filed separate applications by summons in chambers supported by affidavits to have the writs of *subpoena* served on them set aside on the common ground that the applications by the defence for the issue of the writ were vexatious and an abuse of the process of the court.

H The 1st applicant's case is that he has no knowledge whatsoever of the facts or the merits or demerits of the above mentioned suit either personally or in his official capacity as the Minister of Home Affairs and as such he would be in no position to give any relevant evidence. The 1st applicant also says that the defendant is a detainee under the Internal Security Act 1960, a subject matter under his portfolio, and that the writ has been served on him for political purposes.

I The 2nd applicant's case is that he is also unable to give evidence which can possibly be relevant to any issue which may arise in the above named suit as he was not present on any of those occasions when the defamatory statements were alleged to have been uttered by the